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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Carriage of the Transmissions)
of Digital Television Broadcast Stations)

Amendments to Part 76)
of the Commission's Rules)

CS Docket No. 98-120

COMMENTS

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SUMMARY

The cable television broadcast signal carriage rules regarding must-carry and retransmission consent should be drawn to accommodate the carriage of digital broadcast television signals. Application of must-carry to the upcoming digital television environment serves the same public interest goals which originally motivated its application in the analog television environment. Must-carry ensures that viewers have access to vibrant local sources of news and information which are responsive to community needs. More importantly, it ensures a multiplicity of television views now found on over-the-air television, including the Spanish-language programming offered by Entravision Holdings, LLC. Without must-carry, the health of non-network broadcast stations will be jeopardized due to the realities of the competing forces of supply and demand for cable channels. Must-carry will speed and smooth the transition to digital television, and serve all parts of society who are, at bottom, what constitutes serving the public interest.

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COMMENTS

Entravision Holdings, LLC ("Entravision"), by and through its counsel, and pursuant to Section 1.415 of the Commission's Rules, hereby files its Comments in the above-captioned proceeding concerning carriage of the transmissions of Digital Television Broadcast Stations. In support thereof, Entravision states as follows:

INTRODUCTION

The Commission seeks public comment on the "broadcast signal carriage responsibilities of cable television operators in the evolution toward digital broadcast television." In the Matter of Carriage of the Transmissions of Digital Broadcast Stations - - Amendments to Part 76 of the Commission's Rules - - Notice of Proposed Rule Making, CS Docket No. 98-120, ¶ 1 (1998) (hereinafter the "Notice"). Among the issues upon which comment is sought is "whether to amend the cable television broadcast signal carriage rules, embodied in must-carry and retransmission consent, to accommodate the carriage of digital broadcast television signals. *Id.*, at ¶ 2.

The Notice states that the responsibilities of cable television operators in the evolution toward digital broadcast television (hereinafter "DTV") are to be viewed in light of the statutory goals contained in the Communications Act of 1934, as amended (hereinafter the "1934 Act").

Id., at ¶ 1. These goals include retention of the strength and competitiveness of over-the-air broadcast television. Id.

Entravision submits that the must-carry rules developed with regard to analog television broadcasting are equally applicable and must be carried over to the DTV environment. Entravision is the largest non-network licensee of Spanish language television stations, presently owning nine full-power and two low-power television stations, primarily in the Southwest and West Coast areas. Entravision has found from experience that the Commission's must-carry rules are critical to its ability to meet the broadcast needs of its minority-group audience. The Spanish language broadcasting that Entravision provides disseminates information to and serves the needs of local minority populations. This specialized programming would be the first to be ignored in the absence of must-carry in the DTV environment due to the limited number of available channels and the greater advertising revenue alternative cable programming could obtain. The absence of must-carry in the DTV environment will result in these Spanish-language broadcasts being dropped by local cable operators, making them unavailable to those members of the viewing audience dependant on cable service for reception of broadcast channels. This result will not serve the public interest.

The transition to DTV does not weaken the reasons originally annunciated for must-carry: That approximately 60-70% of the television viewing audience receiving television service solely through cable systems should have access to local broadcast television, a valuable source of localized news and information and other programming, and the 30-40% of the television viewing audience without cable television should not have the benefits of over-the-air local broadcast programming denied them by cable systems, who, given the choice, in the absence of must-carry, would drop many local broadcast stations out of self-interest, severely injuring the

ability of broadcast stations to compete in the marketplace and thereby endangering their broadcasts. Entravision urges the Commission to fully apply the must-carry rules developed for analog television to the DTV environment, so as to protect those broadcasters and viewers who provide television service to minority-group members.

ARGUMENT

The Commission Has The Authority To Apply Must-Carry To DTV

As an initial matter, Paragraph 3 of the Notice requests comment on whether the Commission has authority “to define the scope of a cable operator’s signal carriage requirements during the period of change from analog to digital broadcasting.” Entravision submits that the Commission clearly has the authority to apply its must-carry rules to DTV during the period of transition from analog to digital broadcasting. Section 614(b)(4)(B) of the 1992 Cable Act states with regard to “Advanced Television:”

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (codified at 47 U.S.C. § 534(b)(4)(B)) (hereinafter the “1992 Act”).

The plain language of the statute itself clearly indicates that the Commission has authority to establish rules regarding broadcast signals of local commercial stations once they adopt DTV standards. Additionally, the legislative history regarding this provision supports the authority of the Commission to establish must-carry rules during the DTV transition period. See H.R. Rep. No. 102-862, 102d Cong., 2d Sess. 67 (1992) (“when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast high definition television

(HDTV), it shall conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems *will carry* television signals complying with such modified standards”) (emphasis added); S. Rep. No. 102-92, 102d Cong., 1st Sess. 85 (1991) (acknowledging that Section 614(b)(4)(B) allows the FCC to make changes in the signal carriage requirements of cable television systems upon the authorization of broadcast DTV in order to ensure that cable systems will carry television signals complying with the DTV standards). The Commission clearly has the authority to promulgate rules regarding signal carriage requirements during the transition from analog to DTV broadcasting, including must-carry rules and regulations.

Broadcast Television Serves the Public Interest

In order to understand the necessity for must-carry in the DTV environment, it is crucial to understand the importance of broadcast television in the nation’s communications structure. The “basic tenet of national communications policy [is] that ‘the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.’” Turner Broadcasting System, Inc., et. al. v. Federal Communications Commission, et. al., 114 S.Ct. 2445, 2470 (1994), citing United States v. Midwest Video Corp., 92 S.Ct. 1860, 1870-71, n.27 (1972) (citation omitted) (hereinafter “Turner I”). Broadcast television closely serves this goal as “an important source of local news, public affairs, programming and other local broadcast services critical to an informed electorate.” Turner I, 114 S.Ct. at 2462 (1994) (citations omitted).

These views have been codified in the laws regulating the broadcast industry. The Communications Act of 1934, as amended, has fostered and created a system of free broadcast television service in order to “afford each community of appreciable size an over-the-air source

of information and an outlet for exchange on matters of concern.” Turner I, 114 S.Ct. at 2469, citing United States v. Southwestern Cable Co., 88 S.Ct. 1994 (1968). The 1992 Act provides that “[a] primary objective and benefit of our Nation’s system of regulation of television broadcasting is the local origination of programming . . . there is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.” 1992 Act, §§2(a)(10)-(12).

Must-Carry Serves the Public Interest By Counteracting the Anti-Competitive Tendencies of Cable Television With Regard To Broadcast Television

Cable television wields enormous power as a delivery vehicle for television programming. As of 1992, 60% of households with televisions subscribed to cable television. Id., §2(a)(3). Cable market penetration is projected to soon surpass 70%. Turner Broadcasting System, Inc., et. al. v. Federal Communications Commission, et. al., 117 S.Ct. 1174, 1188 (1997) (hereinafter Turner II). Local cable operators often “possess a local monopoly over cable households.” Id., at 1190. “Cable operators thus exercise ‘control over most (if not all) of the television programming that is channeled into the subscriber’s home . . . [and] can thus silence the voice of competing speakers with a mere flick of the switch.’” Id., quoting Turner I, 114 S.Ct. at 2466.

Must-carry exists because of the significant concern that “the economic health of local broadcasting is in genuine jeopardy and in need of the protections afforded by must-carry” Turner II, 117 S.Ct. at 1189. Must-carry serves “three interrelated interests: (1) preserving the benefits of free, over-the-air broadcast television, (2) promoting the widespread dissemination of

information from a multiplicity of sources, and (3) promoting fair competition in the market for television broadcasting.” Turner I, 114 S.Ct. at 2469.

The must-carry provisions, which require cable systems with more than 12 usable activated channels to carry local commercial television stations on their basic tier, and on up to one-third of their available channels, ensures the health of broadcast television, especially broadcasters such as Entravision that do not have the clout of network programming to secure a place on cable television no matter what the circumstances. It has been found that without must-carry, many cable systems would simply drop broadcast stations. “[S]ignificant numbers of broadcast stations will be refused carriage on cable systems absent must-carry.” Turner II, 117 S.Ct. at 1189. This would occur due to a variety of reasons. First, due to the increasingly high level of vertical integration in the television industry, cable television operators have the “incentive and ability to favor affiliated programming.” *Id.*, at 1190, citing 1992 Act, § 2(a)(5). Second, due to the fact that broadcast programming is a close substitute for cable programming for potential advertisers (cheap and frequent advertising spots), cable system operators will also have incentives to drop local broadcasting in favor of programming less likely to compete with their own programming for advertising dollars. *Id.*, at 1191 (citations omitted). Thus, it is likely that absent must-carry provisions, many broadcasting stations will find themselves cut off from approximately 60-70% of their viewers, and these viewers would be denied the benefits of localized sources of news, information, and other specialized programming. Given the increasing demand for cable channels, and the still limited number of available channels, the supply-demand equation continues to favor the cable operator at the expense of the television broadcaster.

This would have a disastrous effect on the health of broadcast programming, especially the Spanish-language programming provided by broadcasters such as Entravision. It has been found that absent must-carry, broadcast stations denied carriage on cable television systems will deteriorate or fail altogether due to a “serious risk of financial difficulty.” *Id.* at 1195.

If a station is not carried on cable, and thereby loses a substantial portion of its audience, it will lose revenue. With less revenue, the station can not serve its community as well. The station will have less money to invest in equipment and programming. The attractiveness of its programming will lessen, as will its audience. Revenues will continue to decline, and the cycle will repeat.

Id., quoting Hearing on Competitive Issues, at 526-27 (statement of Gary Chapman). A denial of access to the 60-70% of the viewing audience that relies on cable for reception of over-the-air local broadcasts will result in a weakening of broadcast programming services and in a reduction in competition in the nation’s television communications industry. *Id.* at 1187 (stating “without congressional action, . . . the role of local television broadcasting in our system of communications will steadily decline”). “[B]roadcast stations denied carriage will either deteriorate to a substantial degree or fail altogether.” *Turner I*, 114 S.Ct. at 2471. Must-carry thus ensures the health of broadcast television, providing the nation with a variety of local informational viewpoints of a diverse nature.

Must-carry also ensures that the nation’s non-cable households, some 30-40% of the nation’s television viewing homes, have a healthy and vibrant over-the-air source of programming to rely on as a news and informational source. The Supreme Court has stated that protection of “noncable households from loss of regular television broadcasting service due to competition from cable systems is an important federal interest.” *Turner I*, 114 S.Ct. at 2470. Must-carry serves this crucial national interest. As shown above, lack of must-carry will result in broadcast stations being dropped from cable systems, thereby taking from these stations the 60-

70% of their audience which relies on cable for reception of local broadcast stations. These broadcasts stations will thus suffer financially from the reduction in advertising revenue caused by this decrease in viewing audience. The end result would be that many stations will undoubtedly fail, ceasing then to reach even the 30-40% of their audience which was able to receive over-the-air broadcasts. Such a result, especially for Spanish-speakers, who rely on their specialty format stations, will be disastrous.

Must-Carry Applies In the DTV Environment

Must-carry is necessary in the DTV environment. Without must-carry in the DTV environment, broadcast stations will be relegated to a second-class position, left behind in the transition to the next technological protocol of television services. This will subject broadcast television to the same ills which would exist in the analog environment without must-carry: fewer advertisers, and financial instability, followed by failure of broadcast stations and a resultant loss of the variety of local informational and news sources central to our nation's television communications policy. Moreover, this will be occurring as broadcasters are required to make the huge capital investment necessitated by DTV transmission systems.

Lack of must-carry in the DTV environment will also delay the transition from analog television to DTV, and frustrate the return of the analog spectrum to the Commission for auction. Failure of a bottleneck provider of television services, such as cable television, to carry the DTV signals of all broadcast stations will detract from the incentive of both broadcasters and viewers to make the transition to DTV. Without assurances that the broadcast audience is going to have access to DTV broadcasts, broadcasters will have little incentive to expedite the capital improvements necessary for the broadcast of DTV signals. Makers of digital television sets will also lack incentive to develop better and cheaper versions of this product in the market without

assurances that DTV signals and programming will be widely available. In this sense, must-carry is the “engine” behind DTV, providing the incentive for broadcasters and viewers to make the transition to the new environment. All licensed broadcasters should be part of this new environment, be it over-the-air or on cable.

SPECIFIC ISSUES

In addition to the general question of the application of must-carry rules in the DTV environment, the Notice presented an number of specific issues for comment. Entravision hereby comments thereto.

Paragraph 41 of the Notice requests comment on immediate carriage: Whether cable systems, upon the transition to DTV, should be immediately required to carry DTV stations up to the existing statutory limits. Paragraph 42 seeks comment on *when* DTV must-carry rules should take effect if this option is adopted. Entravision submits DTV should have immediate access to cable systems pursuant to the existing statutory scheme, and that must-carry rules should have immediate application when the first DTV station is broadcasting in a given technological market. Immediate implementation of these rules is necessary to foster a smooth and successful transition to DTV. Assurance that a majority of the viewing audience will have access to DTV will encourage broadcasters to make capital expenditures necessary for the transition to DTV and will also assure those who finance these capital expenditures that there will be an audience for the technology they are financing. Immediate carriage will also speed the recapture of the analog spectrum for later auction by the FCC. Immediate implementation of these rules will provide the regulatory certainty to the television industry which is necessary to serve the public interest. Implementation of these rules is consistent with the Congressional intent expressed in Section 2 of the 1992 Act: “There is a substantial governmental interest in promoting the continued

availability of . . . free television programming, especially for viewers who are unable to afford other means of receiving programming.” 1992 Act, § 2(a)(12). Technological improvements in cable system capacity and digital compression will mitigate against concerns of channel line-up disruptions which potentially could be caused by implementation of these proposals.

Paragraph 67 of the Notice requests comment on the application of material degradation rules in the DTV environment. Entravision submits that the existing material degradation mandates should be strictly applied to DTV so that each cable system carries the DTV signal in its original, over-the-air format. This will allow the viewing audience to receive the full extent of the DTV capabilities. Without full implementation of the existing material degradation rules, a bottleneck effect may occur, with the full benefits of the DTV signal terminating at the cable system level before ever reaching the viewing audience. This will reduce the incentive of broadcasters to make smooth and speedy transition to DTV, and will frustrate the eventual return of the analog spectrum to the FCC for auction.

Paragraph 79 of the Notice seeks comment on how the rules governing channel positioning should be implemented in the DTV environment. Entravision submits that the channel positioning options embodied in Section 76.57 of the Commission’s Rules and 47 U.S.C. § 534, et. seq. should be applied in the DTV environment so that television stations are able to retain the same channel position that exists for their over-the-air broadcasts. This will allow broadcast stations to retain their channel identity over a variety of cable systems on the same channel upon which they broadcast. This will also serve congressional intent in counteracting the economic incentive of cable systems to relegate broadcast stations to disadvantageous channel positions in order to injure the viewership of the broadcast station and attract additional advertising revenues to the cable system operator. Should it become

technologically necessary during the transition to DTV, Entravision submits that broadcasters should be given the option of electing the channel upon which their DTV signal will be carried. This option would counteract the economic incentive of cable systems to relegate DTV broadcasts to disadvantageous channel positions.

CONCLUSION

The Supreme Court's conclusion with regard to must-carry in the analog environment is equally applicable to the DTV transition: "must-carry serves the Government's interests 'in a direct and effective way' . . . [m]ust-carry ensures that a number of local broadcasters retain cable carriage, with the concomitant audience access and advertising revenues needed to support a multiplicity of stations." Turner II, 117 S.Ct. at 1197, quoting Ward v. Rock Against Racism, 109 S.Ct. 2746, 2759 (1989). Full application of the must-carry rules to the DTV environment is crucial to supporting these goals, expediting the smooth transition to DTV, and ensuring the timely return of the analog spectrum to the Commission for auction, and promoting the public interest by ensuring that all over-the-air broadcasters are ensured a place on cable television for their DTV signals.

Respectfully submitted,

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